



POLICE DEPARTMENT

August 14, 2014

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Raphael Encarnacion
Tax Registry No. 938430
40 Precinct
Disciplinary Case No. 2011-6066

The above-named member of the Department appeared before me on April 7, 2014, charged with the following:

1. Said Police Officer Raphael Encarnacion, while assigned to the 40th Precinct, on or about and between April 14, 2010, and June 17, 2010, engaged in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit: said Police Officer on two occasions requested the assistance from a member of the service to prevent the processing and adjudication of summonses.

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

The Department was represented by Vivian Joo, Esq., Department Advocate's Office, and Respondent was represented by John Tynan, Esq. Respondent, through his counsel, entered a plea of Guilty to the subject charge and testified in mitigation of the penalty. A stenographic transcript of the mitigation hearing record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent, having pleaded Guilty, is found Guilty as charged.

SUMMARY OF EVIDENCE IN MITIGATION

Respondent, a nine-year member of the Department, is currently assigned to the 40 Precinct. Prior to joining the Department, he served for five years on active duty in the United States Marine Corps. He is presently a reservist and holds the rank of staff sergeant. He expects that he will soon be promoted to the rank of gunnery sergeant. He has been deployed to Iraq twice and he has received many awards for his military service.

Respondent confirmed that on April 14, 2010, he asked his union delegate, Police Officer Virgilio Bencosme, to take care of a summons that his wife's uncle had been issued by Police Officer David Rodriguez of Manhattan Traffic Task Force for driving in a bus lane. On June 16, 2010, Respondent again contacted Bencosme and asked him to take care of a summons that a relative of his sister-in-law had been issued by Police Officer Luis Acevedo of the 106 Precinct for making an illegal right turn on a red light.

Respondent testified that ticket fixing was something police officers had commonly engaged in as a courtesy for family members and friends and that his two requests to Bencosme were the only occasions on which he ever participated in ticket fixing. He offered Bencosme nothing in return for his assistance.

On cross examination, Respondent confirmed that the common practice was for police officers to contact their union delegates when they wanted to have a summons taken care of. After Respondent spoke to Bencosme on April 14, 2010, Bencosme sent him a text message that the summons that had been issued to his wife's uncle had been successfully taken care of. After he spoke to Bencosme on June 16, 2010, Bencosme took care of the summons that had been issued to the relative of Respondent's sister-in-law along with two other summonses that Respondent had not been aware of.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on July 11, 2005. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has pleaded guilty to engaging in conduct prejudicial to the good order, efficiency or discipline of the Department in that on two occasions he requested the assistance of a member of the service (MOS) to prevent the processing and adjudication of summonses. The Advocate recommended that Respondent be suspended for five days and also that he forfeit 25 vacation days, for a total forfeiture of 30 days, and that he serve one year on dismissal probation.

In determining a penalty recommendation, I have taken into consideration the penalties imposed in previous cases where MOS have engaged in conduct prejudicial to the good order, efficiency or discipline of the Department by requesting the assistance of another member in the prevention of the processing or the adjudication of two or more summonses or by assisting in the prevention of the processing or the adjudication of two or more summonses. Respondent argued that the penalty to be imposed on him should be the loss of ten vacation days rather than the established standard of the forfeiture of 25 vacation days, suspension for 5 days, and placement on one year of dismissal probation because he has a sterling Departmental and military record, because he received no personal benefit for his actions and because he was only trying to help out people he

knew. Similar requests have been rejected by the Police Commissioner even where the Advocate and the Trial Commissioner have recommended a departure from the established standard penalty. See *Case No. 2011-5124* (Jan. 24, 2012) and *Case No. 2011-5715* (May 3, 2013).

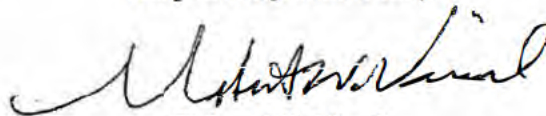
Moreover, this established standard penalty has been imposed by the Police Commissioner in two very recent decisions. In *Case No. 2011-5618* (Jan. 15, 2014), an eight-year police officer who had no prior formal disciplinary record forfeited five suspension days and 25 vacation days and was placed on dismissal probation for assisting in the prevention of the processing or adjudication of two summonses. In *Case No. 2011-5714* (July 18, 2014), a nine-year police officer who had no prior formal disciplinary record forfeited five suspension days and 25 vacation days and was placed on dismissal probation for on two occasions requesting the assistance of another officer to prevent the processing or adjudication of a summons.

Respondent has not presented sufficient justification to warrant a departure from the established standard penalty. Respondent requested Bencosme's assistance in preventing the adjudication of a summons on two occasions and Bencosme successfully prevented the adjudication of these summonses on both occasions.

Therefore, it is recommended that Respondent be DISMISSED from the New York City Police Department; however, this penalty of dismissal will be held in abeyance pursuant to Section 14-115(d) of the NYC Administrative Code for a period of one year, during which time Respondent will remain on the force at the Police Commissioner's discretion and may be terminated at any time without a further hearing. It is further

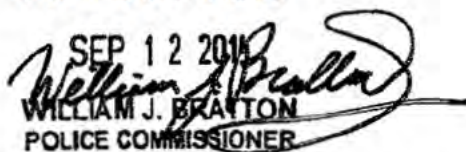
recommended that Respondent be suspended for five days and that he forfeit 25 vacation days for a total forfeiture of 30 days.

Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner – Trials

APPROVED

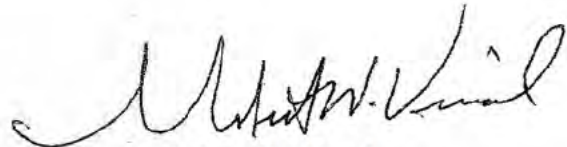
SEP 12 2014

WILLIAM J. BRATTON
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER RAPHAEL ENCARNACION
TAX REGISTRY NO. 938430
DISCIPLINARY CASE NO. 2011-6066

The Respondent received an overall rating of 3.5 on his 2013 performance evaluation, 3.5 on his 2012 evaluation, and 3.5 on his 2010 evaluation. He has been awarded one Meritorious Police Duty medal and one Excellent Police Duty medal. [REDACTED] [REDACTED]. He has no prior formal disciplinary record and no monitoring records.

For your consideration.



Robert W. Vinal
Assistant Deputy Commissioner -- Trials